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WHY I COULD NOT PARDON THE CONTRACT SYSTEM

BY GEORGE W. DONAGHEY,
Governor of Arkansas.

I have consistently fought the convict lease system since I have been in public office. In every public speech I have denounced it. As a member of the penitentiary board I have opposed it in every instance where it was at issue. Time after time I have pleaded with the legislature to abolish it, but in spite of my appeals for relief and the repeated protests of the people of this state and the messages transmitted by the governor to the past two general assemblies, all in condemnation of this cruel penitentiary and county farm lease system, no adequate relief has been given.

The subject has been grossly neglected by the general assembly, partly due to a confusion of ideas as to what plan was best to adopt, and partly due to a disposition by some to let the matter remain as it is, with the statement that "the penitentiary was not designed for a Sunday school."

In answer to such statements, let me say, nor was it designed for a revengeful hell. The abuse of power shown by a few individuals acting as justices of the peace in some towns in Arkansas, as is made plain by the records, is enough to stagger into amazement those who have given the matter attention. Ever since the adjournment of the last legislature, without taking action upon the subject, I have had in mind in some way myself to find some measure of remedy for the evil.

Last September I addressed a communication to the superintendent of the penitentiary asking for a list of all the convicts confined therein, together with their crimes, age, color, sex, terms of confinement, dates of conviction, and all other information concerning their penal history. This has been given me. I also sent a special agent to the county convict farms wherever convicts are worked under the lease system, and got the same information. Through these, and other sources, I have secured reports which are indeed startling, and but for the record in the cases, they could scarcely be accepted as truth gotten from official documents and personal statements among a civilized people.

Instance No. 1. In Phillips county, according to the court records, two negroes jointly forged nine orders for one quart of whiskey each. For this offense one of them was convicted for eighteen years and the other for thirty-six years. When the record of the circuit court convicting them was secured by me, I at once issued pardons for both of them. They had no one to appear in their behalf, and at the time I issued the pardons I was notified by the penitentiary officials that after serving nearly two years of the time, the negro convicted for thirty-six years had died.

Instance No. 2. During the year 1912 it was reported by the citizens of Malvern that while working near that town for a contractor on the railroad, a young white boy convict was compelled to work in the hot sun while he had a burning fever, that he was refused the necessary attention, and that the next day he died. Concerning this matter, it was published in the *Times-Journal*, a paper at Malvern, that information had been secured from the convicts that they were fed mostly on sour pork and beans, and were herded in cars at night, twenty-four or twenty-five men to the car, where they slept amid filth and vermin, and that the slightest complaint upon the part of any convict brought him a lashing on his back with a leather strap six feet long and four inches wide, and that men sent out from the walls, unaccustomed to labor, to work on the railroads were made to do the hardest work in the hot sun from the start; and that, if they lagged or showed inability to do the work they were thrown to the ground and lashed with a strap to the extent of ten lashes and sometimes as many as fifteen, according to the humor of the warden.

Instance No. 3. It was reported from Ward Station that, while working on the railroad for a contractor, a white boy convict, sentenced for a minor offense, was shot down and, after being delivered to the station to be transported to the hospital, while lying on the platform of the depot in the burning hot sun, his blood trickling down the planks of the platform, many people passed by and saw him. When he cried to the passers-by to give him some relief, the warden refused to permit anyone to go near him. He was transported to the hospital, and next day died. Concerning this tragedy, a local newspaper reported as follows:

This young white man lay in this condition for more than an hour. Finally about the time for the train for Little Rock to arrive, the warden said: "get up

and walk to the other end of the depot." The boy attempted to do so, and replied, "I can't walk." The creature, called the warden, said with a black oath: "d——n you, you have one good leg; get down there." They then dragged him to the other end of the platform and put him on the train.

We know of Nero and Otho, tyrants of the Roman Empire. We hear of the atrocities of heathen China. Did the Romans treat their prisoners any worse? Are the Chinese any more cruel to their prisoners? Let's draw the dark curtain and hide the crime—hide it for the sake of the name of "Beautiful Arkansas."

Instance No. 4. In Chicot county a negro was convicted for an offense not grave enough to send him to the penitentiary and was sent to the county farm to work for a contractor. He was fined \$250 and sentenced to six months additional imprisonment, all of which would have required his labor for more than two years to satisfy. In the petition that was filed with me for his pardon and signed by a number of leading citizens, including the circuit judge of the district, the statement was made that the negro's flesh had rotted from around his ankles because of the shackles he was forced to wear while working and that "said Goode is in an extremely bad condition physically, due to the inhumanity of the said contractor . . . that his legs are in a wretched condition from the effect of the continuous wearing of shackles since his confinement both day and night."

Instance No. 5. On the Jefferson County Convict Farm, I found a negro that was sent up from a justice of the peace court for 1,244 days for petit larceny.

Instance No. 6. A negro from another justice of the peace court in the same county, 319 days for petit larceny.

Instance No. 7. In the same county another negro was found serving 1,481½ days for petit larceny and carrying a pistol.

Instance No. 8. In Mississippi county a negro was found serving a sentence of 180 days for disturbing the peace.

Instance No. 9. In Craighead county a white man was found serving over 200 days for assault and battery.

Instance No. 10. In Miller county a negro convicted in a justice of the peace court was pardoned by me from serving a sentence of over three years for stealing a few articles of clothing off a clothes-line. He had served more than a year of this sentence when pardoned.

These are only a few typical cases. If they are not enough, an examination of my files will show many more.

There has also come to my office much complaint about the abuse of power by certain justices of the peace and the bad treatment of county convicts in Pulaski county, but at this time Pulaski county is working both her state and county prisoners on the roads or for the roads. Judge Asher has informed me that while some farm work is done by the county convict, it is done for the support of the convicts on the roads.

The management of the penitentiary has done the best it could in making investigations of these charges, and has caused the discharge of employees for permitting cruelties. They should not be blamed for such outrages, for reasons hereinafter stated. This board has no control of the county convict farms.

Anything but an iron-clad law for the care of the penitentiary and for its administration will be of no protection to the state and the inmates of the penitentiary. Under the conditions existing for the past several years, the state convict farm has been too small for the employment of all the convicts in the penitentiary. Under the imperfect statutes for working convicts on the roads of the state, not enough counties can avail themselves of such an opportunity. Under the law the penitentiary must be self-sustaining. Hiring out convicts when it is considered not practicable to work them directly for the state, is permitted. But the penitentiary management is enjoined to work them under the guardians of the state, the state to feed, clothe, and provide medical attention and otherwise to care for the convicts. Apparently, this is ample protection. But is it? Let us see.

Employment by the railroads of the state for the convicts has been considered the most profitable to the state when hiring them out, affording cheaper safe-keeping for the convicts and being more practical for the management of the penitentiary. Yet, while the convicts work for the railroads, the system in practice is that the railroads will not hire them from the state. All efforts to get them to bid directly for the employment of the convicts have so far failed. But a general contractor hires them. Usually but one man will make a proposal for their hire, and after closing up the deal for all the state has to let, he becomes distributing agent for their labor, and whoever may want them must deal with him.

Sometimes this contractor deals with the railroads himself. At other times he hires the convicts to a second contractor, who in turn hires them to the railroad. The state secures a dollar a day for each able-bodied convict. The railroads pay from \$1.50 to \$2.00 per day to the contractor for them. Just why the railroads will pay the contractor as much as \$2.00 a day for the convicts when they could get them from the state for \$1.00 or at most \$1.25 per day is beyond my scope of knowledge. In round numbers the state has lost \$40,000 of money the contractors agreed to pay it for convict labor during the past four years. No way has been found by the legal department of the state to collect this debt.

Congress do not fare as well on the railroads as they do when working on the state's farm or on the public highways. Three-fourths of the cases of sickness and death originate in railroad camps. It costs the state much more to maintain them in railroad camps than it does either on the farm or on the public roads. In profits the farm yields the most revenue. On the public highways there is no cost to the state at all, while the communities get the benefit of the roads. When on the farm there are fewer escapes, and fewer guards are required. On the railroads, notwithstanding the large force of guards maintained, there are many escapes, and from this work many of the worst convicts in the penitentiary have gained their freedom, sometimes only temporarily, but often permanently. If they are recaptured, it is after the state has offered a reward. One-half of the convicts in the penitentiary, with the proper management, could be worked on the state's farm or on the public roads without guards at all. This is now being successfully done in other states with a worse class of criminals than we have. This being true, the expense can be very much reduced. But to do it, our laws on the subject will have to be rebuilt and specialists in the study and treatment of criminology employed.

But one of the chief reasons for continuing the lease system and existing laws has been the excuse that, with the large number of convicts we have, there was nothing else that could be done but to hire them out to contractors, especially since the penitentiary was in debt.

At this time, however, the penitentiary is out of debt. From the study I have made of the subject, and the information gained during the last four years as a member of the penitentiary board,

I am convinced that satisfaction to the state and the necessary protection to the convicts can never be had under the operation of such laws and such system as we have.

When the amount of labor performed by the convict is to be judged by personal interest, we can easily see how he may be imposed upon in the exactation of his tasks. On the other hand when the state is the only party in interest and the only one to be satisfied, there could arise no condition under which convicts would be underfed, badly treated or overworked.

Then, because of these existing facts and conditions; for the purpose of creating a new condition by which a just and iron-clad law can be passed for the abolition of the lease system; for hereafter putting all the convicts on the public highways of the state and on the state's farm; for reducing the number now confined in the penitentiary so that this result can be brought about; and to remove the incentive for the formation of an opposing lobby to fight such a plan, and at the same time to leave an adequate number of convicts to cultivate the state's farm, and to continue the improvement of the farm, I selected from the list of convicts confined in the penitentiary and on the county farms of the state the names of three hundred and sixty individuals. These all, on the 17th day of December, were pardoned, on condition that they become good citizens and violate no laws of the state in the future, and on the further condition that if they again violate any laws of the state they are to be returned to imprisonment to serve out the remainder of their terms without further process of law or expense to the state for court trials.

The convicts thus selected as beneficiaries were in the main those convicted of minor offenses and having short sentences. Some, however, were under conviction for graver crimes and longer terms. But practically all of these had served at least half their time, when considering the commutations given them under the law for good behavior. A few only were included in the list having reasonably long terms and short confinement. In such cases the judges of the court of conviction, or good citizens, had interceded in their behalf, giving good reasons for parole, and for that reason I had placed them on the list. In selecting this list of convicts, in my judgment I had not pardoned anyone not justly entitled to a pardon under the conditions named.

But my principal reason for discharging the large number was for the purpose of forever breaking up the convict lease system in this state. I would be untrue to my convictions, and, as I see it, untrue to the state's best interests, if I did not do everything in my power to bring about this result.

As before stated, there are enough convicts left to cultivate and improve the state's farm for another year. In the future, as the population of the penitentiary increases, all other convicts should be set to work on public roads. No convicts should ever, under any condition, be permitted again to be hired out or leased to a contractor.

The penitentiary can never be successfully managed until those who are charged with that duty have time enough to do it and are held responsible for that work and nothing more. It is as ridiculous to exact the enormous amount of detail work as is now required of the state officials composing the penitentiary board, in the management of the penitentiary, as it would be to put the management of the same institution under the faculty of the state university and require that body to do it. A state officer is not now elected by the people because of his knowledge of penology or fitness to care for criminals. Nor if he possessed such knowledge, would he have time to attend to his regular official duties and look after the details of the penitentiary too.

During my four years in office, the penitentiary board as a whole has not had time to visit a single railroad camp in the state. The board as a whole has not had time on over one occasion, as I remember it, to visit the state farm. As a body, all together it has not had time even to visit the walls of the penitentiary, near the City of Little Rock. There is not a single member of the penitentiary board now who has the necessary time to do all the work expected of him, and which he ought to do in the office to which he was elected.

The management of the penitentiary should be put in charge of a board of three competent men, appointed by the governor, and the governor should then be held responsible for the conduct of its affairs. This board should become acquainted personally with all conditions connected with the penitentiary, and with all prisoners, their records and penal history. It should recommend to the governor all pardons necessary to be granted, and the governor

should appoint such men as would inspire sufficient confidence to cause him to issue pardons on their recommendation only, without having to be worried to death while in his office listening to the appeals for pardon, which require at least three-fourths of his time. No convict should be imprisoned on a county convict farm under a contractor. County convict farms should be abolished altogether. If a convict cannot be worked on the public roads, he should be sent to the penitentiary. All convicts imprisoned for ten years or less should be sentenced directly by the courts to work on the public roads. If there are no public roads under construction in the judicial districts where the convictions are, they should be sent to some other district where road work is being done and where the equipment is sufficient to care for the convicts.

In concluding what I have to say upon this subject, permit me to suggest that I favor law enforcement. That I have been conservative in granting pardons. That I have not been unduly exercised from sentimental causes. That I have not issued pardons for political favors. That much of the opposition I have had has been from parties disappointed in securing pardons. That I believe it is right and just to punish criminals in severity and terms of confinement according to their crimes. But enforcing law by putting criminals in the penitentiary and then selling their flesh and blood to contractors after they have been bound and manacled in chains, under such conditions that the contractors are enabled to make fortunes, while from cruelty the lives of the convicts are snuffed out, is a different matter altogether.

Such abuse of power is a reflection on our intelligence, a repudiation of the principles of civilization, a crime against humanity, and, if continued, will cause a forfeiture of that respect which a state should maintain among the sisterhood of states of this nation. In a commitment which accompanies a convict to the penitentiary there is an implied judicial guarantee that, though he is deprived of his liberty as a citizen, he is still granted the right to live and to be cared for in a manner commensurate with sound reason, good judgment and human mercy. The state does not intend, nor should it longer permit, conditions to arise by which convicts may be subjected to such treatment that their imprisonment carries the combined penalties of loss of liberty, hard labor and severity of punishment until death itself may end their lives. If for the protection

of the state and the preservation of society the death penalty must be given, the courts and juries are the proper forum from which it must be pronounced. No civilized body of people on the face of the globe now authorizes death by oppression, or any other method except that approved by the most humane process and such as will give the least pain and the quickest death.

It is for the correction of the injustice herein named that I have taken the action I have in discharging the large number of convicts reported.